HISTORY OF A CONTRACT

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HISTORY OF A CONTRACT.

About twelve days ago, certain papers, referring to the award of a contract on the Canadian Pacific line, published an Ottawa despatch worded somewhat as follows : The contract for the section from Emory Bar to Port Moody has been awarded to Mr. A. Onderdonk, Yale, B. C., Messrs. Charlebois and McDonald, although they were the lowest tenderers, being set aside an account of an irregularity in their attached cheque.

This short despatch contained a fact and nothing more. But the results were none the less disastrous for two highly honorable contractors, whose reputation with specialists and the general public is attested by the important works they have executed.

Brief and vague as it was, the despatch further signified that the tax-payers of Canada would be called upon to pay $200,000 more for this little transaction, than if the section had been awarded to Messrs. Charlebois and McDonald.

This dead loss, for which there is no compensation to the country, this kind of denial of justice throughthe fickleness of a Minister, who is a greater stickler for the letter than for the spirit of the law, is one of those strokes of authority which carry with them their own lesson: My turn, yesterday; yours, to morrow.

In consideration of the large interests involved in this case, it has been thought proper to lay the facts before the public, with the documents relative thereto.

On the 21st of October, 1881, the usual advertisements were published in the *Canada Gazette,* and other papers, for the tender of one of the sections of the Canadian Pacific Railway.

The limit for the reception of tenders was the 1st February 1882.

This rather lengthy interval was granted, because it gave tenderers the opportunity of visiting the locality, and becoming acquainted with all the requirements of the work.

Almost at the same time, Messrs Charlebois and McDonald sent, at their own expense, an engineer to British Columbia, in order to explore the section under tender.

It was understood that the tenders were to be for the work in bulk and not in detail. Besides this, and according to the custom, the department did not give its own estimates, but left these to the contractors at their own risk and responsibility.

Furthermore, the Government did not reserve the right, as it generally does in its entries for tenders, of awarding the contract to the tenderers who produced the best guarantee for the fulfilment of the work.

In the month of January, of this year, the maps and official plans relating to the work were open for consultation in the Engineer's Office at Ottawa.

Mr. Fowler, engineer for Messrs. Charlebois and McDonald, remained from that date till the 1st February, busy making out his quantities and estimates.

It is a singular fact that, whereas the Government had previously left the estimates to the tenderers themselves, about the 28th January, it suddenly made public its own estimates. Better late than never!

Another point worthy of mention is that on the board where these figures were set forth, there was this notice in good-sized letters: "these estimates have been drawn up for the use of the department, but it declines to be responsible for them." This meant a great deal in one sense, and nothing in the other.

On the 24th January, Messrs Charlebois and McDonald went to Ottawa to examine and verify the estimates, carrying with them, and attached to their tender, that famous cheque,

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accepted by the Bank of Montreal, which will remain for ever memorable in the politico-financial annals of Canada.

On the 1st February, Messrs Trudeau, Schreiber and Braun, who were appointed to examine the tenders, did so with the following results :

McDonald and Charlebois.....	$2,277,000
A. Onderdonk, Yale, C. B.....	2,486,255
Ryan and Purcell, Ottawa.....	2,970,000
J. Murray and Co, Ste Catherine.....	2,864,242
D. O'Brien and Co, Montreal.....	2,999,735
James Codwin, Ottawa	3,062,000
W. Davis, Ottawa.....	3,169,800
The Railway Importation Co, New-York	3,190,000
F. J. Beemer, Montréal.....	3,195,000
E. J. Charlton and Co, Quebec.....	3,349,000
Wm Ede and Co, San Francisco.....	3,989,000
Manning and McDonald, Toronto....	3,389,000
J. B. Montgomery, Portland, Oregon.	3,488,000
John Hebert and Co. Toronto.....	3,531,000

And right here the trouble begins.

The first document in this case consists of a report which Mr. Schreiber, Chief Engineer of the Government, addressed on the 6th February, to Mr. Braun, notifying him of the reception of fourteen tenders in all for the section from Emory Bar to Port Moody. Mr. Schreiber adds that the tender of Messrs. Charlebois and McDonald, of Montreal, must be rejected, on account of the worthlessness of the cheque attached thereto, a cheque stamped with the stamp of the Bank of Montreal, bearing date 24th January and purporting to be good for two days only, and that consequently the tender of Mr. A. Onderdonk, to the amount of $2,486,225 became the lowest. The report concluded with the reception of the latter, after mentioning the ability and the means of the said contractor, whose figures were found to be almost identical with those of the learned engineer himself.

A copy of the cheque of Charlebois and McDonald was as follows :—

37051

Montreal, 23rd January 1882.

To the Bank of Montreal:

Pay to the order of the Honorable the Minister of Railways and Canals twenty thousand dollars ($20,000).

McDONALD & CHARLEBOIS.

Stamped on the face of the cheque was, "Bank of Montreal, entered in No. —, January 24, 1882. Good for two days only."

Now these fateful words "good for two days only," disquieted the Honorable Minister of Railways who sent his private secretary to the Ottawa Branch of the Bank of Montreal for explanations.

Here begins an incident on which depended the acceptance or refusal of Messrs. Charlebois & McDonald's tender.

The point was whether, in spite of the stereotyped phrase, "good for two days only", the cheque maintained its value as an accepted draft, or whether that value was confined to the narrow period therein specified.

Two things were to be considered, though in reality they form only one—the object and scope of the Bank of Montreal stamp. Every business man knows very well that the said stamp is a pure formality, having no legal sanction whatever, and used for the sole purpose of preventing the circulation of the Bank's cheques. This measure favors the return of the paper to the Bank and facilitates bookkeeping, on the one hand; while, on the other hand, its secures for the Bank, which discounts its own drafts, a commission which it would lose if traders, reliying on the credit of the institution, used its paper as simple bills.

By what right could a bank limit the term of discount of a cheque, value for which its has received and retains?

As a matter of fact, the cheque is the property of Messrs. Charlebois & McDonald and not that of the Bank of Montreal. The latter is debtor and not creditor.

This is the law of the case. Now for the facts.

The Honorable Minister of Railways, evidently little familiar with Bank operations, conceives a doubt of the validity of the cheque, and sends his secretary to the Ottawa Branch for necessary information from the Manager.

Now, if the Minister asks for explanations, it is naturally with the view of using them, and acting accordingly. This is clear from the fact itself which would have been useless, if not acted upon.

Well, the explanation was given by Mr. Drummond, the Manager, as appears in a letter of Mr. Bradley, the private secretary.

Here is the document :

DEPARTMENT RAILWAYS AND CANALS.

Minister's Office, Feb. 6, 1882.

MEMO.—Monday, February 6, 1882, *re* tender Emory Bar and Port Moody.

Under instructions from the Minister on Saturday last, I called at about half-past ten o'clock this morning on Mr. Drummond, Manager of the Bank of Montreal here, and handed him a certain cheque drawn by McDonald & Charlebois on the Bank of Montreal, dated 23rd January, 1882, for $20,000, and stamped on the 24th of same month " good for two days only," asking him whether he would pay it. He shook his head and said it would be necessary to inquire at the head office. He suggested making enquiries, to which I assented. At about one o'clock this day, Mr. Drummond called at my office and handed me in presence of Mr. Trudeau the telegram from the head office, Montreal, which I this afternoon handed to the Minister, and which is marked with my initials.

[Signed] A. P. BRADLEY.

As to the despatches that passed to and fro, here is their drift :

Ottawa, February 6, 1882.

To Bank of Montreal, Montreal :

The Department of Railways holds McDonald & Charlebois cheque for $20,000, certified by Montreal Branch, 24th January. Is it still good and for how long will it be guaranteed ?

[Signed] A. DRUMMOND, Manager.

February 6, 1882.

To Bank of Montreal, Ottawa;

Referring to your telegram to-day, please strike out for two days only from our acceptance stamp. The cheque will be good until paid.

[Signed] SHADBOLT, Manager.

After reading these documents, so formal and explicit, can there be the shadow of a doubt in any impartial mind as to their meaning?

How does it come, however, that this answer of the Bank communicated to the Minister in the afternoon of the 6th, as is shown by the letter of his private secretary, should in the Minister's report of the 6th or 7th, and laid before the Council on the 8th, have been made the ground of a decision so contrary to precedent, equity and common sense?

And, by what miracle of foresight could the Minister of Railways have known, on the 4th February, the irregularity of the Charlebois–McDonald cheque, when it is officially established that the report addressed to the Minister by one of the officials appointed to open the tenders, Mr. Schreiber, the engineer in chief, did not reach the Minister till the 6th February?

There is more. We are assured that the officials who examined the tenders could not have pointed out the irregularity of the cheque, for the excellent reason that not one of them noticed it.

Were there two reports—one drawn up on the 1st February and the other on the 6th.?

The fact is worth clearing up.

We shall recall, only as a memorandum, the interference of Mr. Schreiber in a special question, outside of his official attributions. We refer to that portion of his report in which he delivered his judgment on the validity or nullity of the Charlebois–McDonald cheque.

This case reveals a singular mode of proceeding. Relations of professional courtesy are reversed, an engineer treats of

financial questions, and a Bank Manager resolves problems of civil engineering.

The report addressed by Mr Schreiber, chief engineer of the government, shows that he formally declared the nullity of a Bank stamp, and one of the last paragraphs, to which we call attention, will display a banker pronouncing judgment on public works.

OTTAWA, Feb. 11, 1882.

To the Manager, Montreal :

DEAR SIR,— I have your letter of the 10th inst, *in re* McDonald and Charlebois cheque. The enquiry by telegram on the 6th inst. was by request of Mr. Bradley, Secretary to the Minister, who called and exhibited the cheque stamped as "good for two days only from 24 inst." He desired to know if it was still good, merely, but while telegraphing for a special reply from you as to this—in order to inform the Department—I would further ask for how long it would be held, so this he said might do at the same time. Although his enquiry was only if it was still good, on receipt of your reply that it was so and would be good until paid, I went over personally to the Department and mentioned your reply to the Secretary. The cheque I did not again see, but by request I left your telegram with him, as the authority to deal with or treat the cheque as it stated. I had no knowledge at the time as to whether any decision or not had been arrived at in respect to the tenders to which the cheque had reference, and which were given in and opened on the 1st inst, nor until the 9th was I made aware that it had been awarded to Mr Onderdonk by his calling here in reference to his security through the head offices. I naturally inferred after leaving your telegram with the Department that it would be quite satisfactory, and that as authorized, the restrictive clause would be struck out : but I infer from an expression of the Deputy Minister yesterday, that while in their possession it was held such an alteration of the terms could not legally be done, and that the cheque at the time of opening the tenders was informal, from the time it was limited to having previously elapsed. I presume, therefore, that under the circumstances their tender under the regulations was excluded from consideration. The difference is not great. however between their tender and that of Onderdonk, and both, being low, they might have had an unprofitable or losing contract, while he, having a large amount of plant there already, could make it pay with his appliances and means. Mr. McDonald, along with Judge Coursol, called this morning about the matter, apparently desirous to remove any impression with the Department that the cheque

was so limited with any design on their part. This, no doubt, occurred inadvertently and without being known when issued, which I explained to the Department previously.

Yours truly, A. DRUMMOND, Manager.

What are we to think of this comfort *in extremis* couched in terms of so much art and sympathy ?

For the edification of the reader it is well to reproduce the letter of Mr. Shadbolt, Manager of the Bank of Montreal at Montreal :

Bank of Montreal, 10th February,

Messr. McDonald & Charlebois.

Dear Sirs.

In reference to the telegram from Ottawa saying that your contract could not be taken into consideration, inasmuch as there was no cheque stamped as good, as required by the specifications, I take the liberty to declare that on 6th I telegraphed to our Branch at Ottawa to efface on our stamp of acceptance " for two days only, " and I affirmed the validity of the cheque until it was paid. Our Branch replied by the same day's mail that they had done as required, and that this satisfied the department.

Truly yours

(Signed) E. SHADBOLT,

Which clerk was it that manifested the satisfaction of the department, as the letter says ? Whence this contentment ? Doubless from the certainty acquired of the cheque's validity ? Or did it spring from other motives ?

That is the question.

The following is the letter to Mr. Trudeau.

Ottawa. Feb. 17, 1882.

T. Trudeau, Deputy Minister of Railways and Canals :

Dear Sir.

I have read the memorial of Messrs. Charlebois & McDonald,

and with the view of correcting an apparent misapprehension or error in exhibit No. 2, I have to remark that the telegram of enquiry dated the 6th inst. was drafted by me. Mr. Bradley merely franked a blank for the purpose, which was filled in after he left. In reference to the 9th clause and exhibit No. 4, wherein the reply by telegram from the Montreal branch stating that the cheque was good and would be good until paid was expressed as satisfactory to the Department, I enclose a copy of the letter to the Montreal Branch dated the 11th inst., explanatory of this and the circumstances of the case under which the enquiry was made, which led me naturally to infer the reply to be quite satisfactory when I communicated it to the secretary; but no one in the Department then expressed anything in regard to it, further than the secretary requested the telegram to be left with him, which I presumed was with the view of being attached to the cheque, and being submitted with it as the requisite authority for dealing with it as expressed in the telegram.

Your obedient servant,

(Signed), A. DRUMMOND,
Manager.

In this last missive, Mr. Drummond explains the satisfaction of the Department. It would appear that this satisfaction was with him only a personal impression, a sudden illumination, for he hastens to add that no one in the office said a word to him about the affair.

Wise manager!

Next we have this letter :

CANADIAN PACIFIC RAILWAY,

Office of the Engineer-in-chief.
Ottawa, February 2.

To C. Schreiber, C. P. R. :

Port Moody-Emory Section.—I have made a rather hurried estimate of the cost of constructing this section at the lowest prices I considered it safe. This amounts in round numbers to $3,000,000 (including the station and wharf at Port Moody). I do not think that this can be much reduced in strict accordance with the plans, but I am going over the whole matter carefully, checking the quantities and noting points where

a possible reduction can be made by slight changes in the line and other modifications. This will occupy several days.

(Signed) MARCUS SMITH.

This letter belongs to another class of literature, light, easy and free. The writer is Mr Marcus Smith, the government engineer in British Columbia, the honorable functionary who made out the official estimates submitted to the contractors on the 28th January and that fell among them, on the 1th January, three days before the opening of the tenders, like an aerolite on a market square.

In his letter of the 2d February, he says that he made these estimates in haste; that the cost of th e Emory Bar and Port Moody section could hardly be less t h an $3.000.000, but he would look into the matter carefully, calculate the estimates and determine the points where light changes on the line, or other alterations might be made tending to reduce the price.

This is candor with a vengeance! Indeed, coming from a subaltern to his superior, it is independence. And just to fancy that engineers and contractors risk their future and their honor on estimates made thus hurriedly!

Notice further the touching agreement between these two confreres.

The tender of A. Onderdonk recommended by Mr Schreiber to the Minister, on the 6th February, is $2.486.255. But the $3.000.000 calculated by Mr. Marcus Smith who was on the ground and measured for himself, what becomes of them? Oh, but his exploration was made in a hurry, and Mr. Marcus Smith assures us that reductions can be made by trying hard. And yet this did not prevent the estimates of the 28th January being 20 or 25 per cent higher than the real quantities.

How are we to understand these reductions and this handling? What were the object and motive of it all?

If they could have discovered in the contract one of those errors of calculation or omission which alter the bearing of

the whole, with what secret joy they would have pointed it out.

But no. The estimates, made with the utmost care, agree almost entirely with those of M. Sandford Fleming when, as chief engineer of the Canadian Pacific, he furnished the figures—cited in Sir Charles Tupper's report of 1880—of the cost of the section between Emory Bar and Port Moody.

Including rolling stock and rails, the learned engineer gave the price as $38.888 per mile. The contractors, not having to provide rolling stock or rails, had $13.000 a mile in their favor for equipment.— Mr. Fleming's calculation—a a difference which reduced the cost to $25.000 a mile.

And yet the tender of Messrs. Charlebois and McDonald exceeds the estimate of the government engineer by about $75.000.

This sum added to the $200,000, lost on the Onderdonk contract, represents a pretty heavy loss to the public exchequer.

The game continues to the end, pretty much as it commenced, thus :

Montreal, 10th February, 1882.

To Sir Charles Tupper :

The *Gazette* of this morning says that we were the lowest tenderers for the Port Moody section and that, as we had failed to make the deposits, the contract was awarded to Onderdonk. That is not accurate. We only await notice from the government to complete the deposits. We await a reply.

(Signed) McDONALD & CHARLEBOIS.

The *Gazette* was well informed.

Same date to Mr. Braun :

Is there any decision about the British Columbia tenders? We await notice to make deposit.

(Signed) McDONALD & CHARLEBOIS.

The answer was :

Ottawa, 16 February 1882.

To McDonald & Charlebois :

The contract has been awarded to Onderdonk whose tender was the lowest, inasmuch as yours could not be taken into consideration, your cheque not being stamped as good, as required by the specifications.

(Signed) F. BRAUN.

What reply was made to this? A petition to the Governor General in Council, dated 14th February. It was the only recourse.

These Gentlemen contend that their tender was regular and $200,000 lower than any other, but that it was set aside, the department alleging that it was not accompanied by the cheque for $20,000 marked "valid", as required by the specifications. They allege that their cheque was valid, that it was accepted by the bank, the 25th January, and that later, after inquiry made on the 6th February, it was declared valid until paid and that it was valid since the date of the said cheque. They allege that the cheque is still valid, that it could be paid or negotiated for cash at any time, and that it is still in the possession of the department. They request that the order in Council awarding the contract to Onderdonk be reconsidered and that the contract be awarded to them; and they declare that they are prepared to fill the said contract. This petition is accompanied by copies of letters and despatches given above.

CONCLUSION.

The award of the Emory Bar-Port Moody contract, a transaction as suspicious as it is complicated, and in which dates, letters and despatches are mixed up as in a web, needs only to be exposed in order to be made clear and limpid.

The validity of the cheque — the principal point — was affirmed and confirmed formally and categorically to the Honorable Minister of Railways, and that in good time, by the principal officers of the Bank of Montreal.

In connection with this, we learn from pretty good authority that, on the 2nd February, Sir Charles Tupper replied to a question put by a contractor: "Your affair has just been laid before the Council."

Then come the letters and despatches whose substance and style bewilder the credulous and make the prudent smile.

There are not a few who see in this unfortunate award a secret hostility, a covered persecution against a race and province. Others discover motives of self interest and political considerations. Others again suspect certain influences that had to be conciliated, certain demands that had to be satisfied. The press and the public have exhausted every conjecture in regard to this sorry award, and no one has yet been able to find the reasons of the Minister's conduct.

We reproduce these rumors here, not because they favor our cause, but because, taken all together, they do not suffice to explain to sensible men, in so serious a matter, the light conduct, want of practical intelligence and the incapacity of the Minister of Railways, and a Privy Concillor.

We submit the whole case to the members of Parliament and to the public. Every one will judge for himself. As for ourselves, we accept the verdict in advance.

Will the Minister of Railways, and his colleagues, the members of the Council, show themselves less confident, will all their power and on the merits of their cause, than two citizens in their weakness and obscurity?

The refusal of an inquiry demanded by public opinion would give rise to the gravest presumptions against the authorities and in favor of ignored rights.